

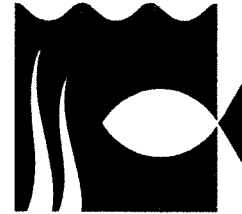


**Connecticut Fund
for the Environment**

RECEIVED

JUN 12 2013

OFFICE OF THE REGIONAL ADMINISTRATOR



Save the Sound

June 10, 2013

Via Certified Mail, Return Receipt Requested

P.C. Metals, Inc.
Gloriana Carbone Tardie, President
270 Central Ave.
Bridgeport, CT 06607

G.C. Metals Recycling, Inc. (d/b/a G C Precious Metals, Inc.)
Gloriana Carbone Tardie, President
270 Central Ave.
Bridgeport, CT 06607

Re: Notice of Violation and Intent to File Suit under the Clean Water Act

Dear Madam,

We are writing on behalf of Connecticut Fund for the Environment, Inc.,¹ Conservation Law Foundation² ("Notifiers") and Soundkeeper, Inc.³ to notify you of their intent to file suit against P.C. Metals, Inc. and G.C. Metals Recycling, Inc., also doing business as "G C Precious Metals, Inc.," ("You" or "Your") pursuant to Section 505(a) of the Federal Clean Water Act ("CWA")⁴ for violations of the CWA.

¹ Connecticut Fund for the Environment, Inc. ("CFE") is a not-for-profit 501(c)(3) organization founded in 1978 and headquartered in New Haven, Connecticut. The mission of CFE and its permanent program, Save the Sound, is to protect and improve the land, air and water of Connecticut and Long Island Sound through legal and scientific expertise. Save the Sound and CFE represent approximately 3,600 member households, many of whom use and enjoy Long Island Sound.

² Conservation Law Foundation ("CLF") is a not-for-profit 501(c)(3) organization founded in 1966 and dedicated to the conservation and protection of New England's environment. Its mission includes the conservation and protection of the many uses of Connecticut's waters including those in and around the Long Island Sound watershed for, among other things, fishing, recreation, boating, scenic/aesthetic, and scientific purposes. CLF's membership includes people who live on or near the Sound and its tributaries, and use and enjoy the watershed for recreational, aesthetic, and/or scientific purposes.

³ Soundkeeper, Inc. is a not-for-profit 501(c)(3) organization founded in 1987 and based in Norwalk, Connecticut, whose mission is to protect and enhance the biological, physical, and chemical integrity of Long Island Sound and its watershed and tributaries through education, projects, and advocacy. Soundkeeper's members include a broad cross-section of the public, including commercial fishermen, boaters, swimmers, recreational fishers, marine industry members, shellfish harvesters, birders, and other members of the public who share Soundkeeper's mission.

⁴ 33 U.S.C. § 1365(a). We refer to statutory provisions by their section in the Clean Water Act and provide the parallel citation to the United States Code only on first reference.

The Notifiers intend to file suit, as organizations and on behalf of their adversely affected members, in the United States District Court for the District of Connecticut seeking appropriate equitable relief, civil penalties, and other relief no earlier than 60 days from the postmark date of this letter.

The Notifiers intend to take legal action because you⁵ are discharging stormwater from the facility at 270 Central Ave., Bridgeport, CT, 06607 (“the Facility”), located on the west bank of Johnsons Creek in Bridgeport Harbor, to the waters of the United States without a permit in violation of Sections 301(a) and 402(p)(2)(B) of the CWA.⁶

Further, you have not sought and obtained coverage under, nor complied with the conditions of, an individual National Pollutant Discharge Elimination System (“NPDES”) permit or the General Permit for the Discharge of Stormwater Associated with Industrial Activity (“General Permit”)⁷ issued by the Connecticut Department of Energy and Environmental Protection (“DEEP”) in violation of CWA Sections 402(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1).

The Notifiers mailed you a similar letter dated April 6, 2012 alleging CWA violations. This letter updates the previous letter by additionally alleging illegal stormwater discharges to waters of the United States via a direct hydrological connection through the groundwater, as discussed below.

I.

BACKGROUND

With every rainfall event, hundreds of millions of gallons of polluted rainwater pour into Long Island Sound and other receiving waters. The consensus among agencies and water quality specialists is that stormwater⁸ pollution accounts for more than half of the total pollution entering the marine environment each year.

DEEP has designated more than 1000 river miles and 6000 acres of larger waterbodies in the State as “impaired,” or not meeting water quality standards, and unable to support beneficial uses such as fish habitat and water contact recreation.⁹ For the overwhelming majority of water bodies

⁵ Notifiers hereby put PC Metals, Inc. and G.C. Metals Recycling, Inc. (d/b/a/ G C Precious Metals, Inc.) on notice that Notifiers intend to sue them both. If you can demonstrate that ownership and control of industrial activities on a portion of the Facility is exclusively in the hands of one entity and not the others, you are invited to contact my office at your convenience.

⁶ 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B).

⁷ State of Connecticut, Department of Energy & Environmental Protection, General Permit for the Discharge of Stormwater Associated with Industrial Activity (Oct. 1, 2011), *available at* http://www.ct.gov/dep/lib/dep/Permits_and_Licenses/Water_Discharge_General_Permits/storm_indust_gp.pdf [hereinafter “General Permit”]. Connecticut’s General Permit for the Discharge of Stormwater Associated with Industrial Activity was first issued on October 1, 1992, and has been reissued and/or modified several times since then. The current General Permit became effective on October 1, 2011, and will expire on September 30, 2016.

⁸ Stormwater is water from precipitation events that flows across the ground and pavement after it rains or after snow and ice melt. *See* 40 C.F.R. § 122.26(b)(13).

⁹ *See* Environmental Protection Agency, Watershed Assessment, Tracking and Environmental Results, http://iaspub.epa.gov/waters10/attains_index.control?p_area=CT (last visited May 29, 2013).

listed as impaired, stormwater runoff is cited as the primary source of the pollutants causing the impairment. Contaminated stormwater discharges can and must be controlled in order to improve the quality and health of these waterbodies.

Investigators for Notifiers have observed and documented activities and practices at the Facility that expose pollutants to stormwater and release that polluted stormwater from the Facility. In particular, as described further below, you discharge polluted stormwater from point sources including large uncovered piles of scrap, used barrels and open containers of scrap metal, vehicles, metal moving and compacting equipment, and other waste materials stockpiled throughout the facility.

Additionally, you have implemented control measures that deliberately channel and convey this polluted stormwater into on-site catch basin drywells where pollutants dissolved in stormwater infiltrate into the ground and then very rapidly travel into Johnsons Creek through the soil, or through groundwater that is directly hydrologically connected to Johnsons Creek. The facility is located directly adjacent to Johnsons Creek in Bridgeport Harbor and slopes toward the waterbody.

Stormwater discharges flow from the Facility into Johnsons Creeks in Bridgeport Harbor, which then flows into Long Island Sound. DEEP has classified Bridgeport Harbor, including Johnsons Creek in Inner Bridgeport Harbor, as a Class “SB” water.¹⁰ Under the Water Quality Standards for the State of Connecticut, Class SB waters are designated for the following uses: “habitat for marine fish, other aquatic life and wildlife; commercial shellfish harvesting; recreation; industrial water supply; and navigation.”¹¹ The Connecticut Water Quality Standards establish minimum parameters to support the designated uses assigned to each Class of waterbodies. These minimum parameters include, but are not limited to aesthetics; dissolved oxygen; sludge, oil and grease, scum; color; suspended and settleable solids; silt or sand deposits; turbidity; bacteria; pH; temperature; and chemical constituents.¹²

Bridgeport Harbor, including Johnsons Creek, consistently fails to meet state water quality standards and illegal stormwater discharges from this Facility contribute to this failure.¹³ DEEP has designated Bridgeport Harbor as impaired pursuant to Section 303(d) of the CWA, 33 U.S.C. § 1313(d), for failure to support one or more of its designated uses.¹⁴ For the designated uses of commercial shellfish harvesting and habitat for marine fish, other aquatic life and wildlife, DEEP has determined that urban stormwater is a potential source contributing to the impairment.¹⁵

¹⁰ See http://www.ct.gov/dep/cwp/view.asp?a=2719&Q=452444&depNav_GID=1654#Current (last visited May 29, 2013).

¹¹ See Connecticut Water Quality Standards at 16, *available at* http://www.ct.gov/deep/lib/deep/water/water_quality_standards/wqs_final_adopted_2_25_11.pdf [hereinafter “CT WQS”].

¹² *Id.* at 16-17.

¹³ See State of Connecticut, Department of Energy & Environmental Protection, State of Connecticut Integrated Water Quality Report Table 3-2, at 246 (December 17, 2012), *available at* http://www.ct.gov/dep/lib/dep/water/water_quality_management/305b/ctiwqr10final.pdf.

¹⁴ *Id.*

¹⁵ *Id.*

Long Island Sound (“LIS” or the “Sound”) is the ultimate receiving water for discharges from the Facility. DEEP has designated Long Island Sound for uses including shellfishing and recreation.¹⁶ But the Sound consistently fails to sustain these uses and fails to meet state water quality standards. Thus, DEEP has designated LIS as impaired pursuant to Section 303(d) of the Act, 33 U.S.C. § 1313(d).¹⁷ Illegal stormwater discharges from the Facility contribute to the Sound’s impaired status.

II.

STANDARDS AND LIMITATIONS ALLEGED TO HAVE BEEN VIOLATED AND ACTIVITIES ALLEGED TO BE VIOLATIONS

A. You Are Discharging Stormwater Associated with Industrial Activity to Waters of the United States without a Permit.

The CWA prohibits the discharge of pollutants to the waters of the United States except in accordance with a valid NPDES permit.¹⁸ Your industrial activity at the Facility has caused and continues to cause a “discharge of pollutants” within the meaning of Section 502(12) of the CWA¹⁹ and “stormwater discharge associated with industrial activity” within the meaning of 40 C.F.R. § 122.26(b)(14), from the Facility on at least each and every day that there has been a measurable rain event of above 0.1 inches.²⁰ The Facility has exposed and continues to expose pollutants to stormwater, at a minimum, (a) by storing and processing scrap metal and other materials outside or otherwise exposing them to the elements, and (b) from vehicles entering and leaving the Facility that track pollutants off site. During precipitation events (including runoff from rainfall and snow or ice melt events), pollutants are carried away from the Facility in stormwater discharges. Additionally, runoff that is directed by earthen berms located along the perimeter of the property into the two on-site catch basin drywells enters the nearby navigable waters via a direct hydrological connection between the catch basin drywells and Bridgeport Harbor.

Your activities at the Facility include but are not limited to the purchase, collection, processing, storage, reshipment and resale of scrap metal outdoors and the operation and storage of industrial equipment. Upon information and belief, the Facility houses scrap piles that contain, but are not limited to, industrial scrap steel and non-ferrous materials, including but not limited to aluminum, copper, brass, stainless steel, bronze, zinc and various alloys that are contaminated with industrial pollutants, as well as other waste materials. Through prior use, some of these materials are contaminated with additional pollutants such as used oil, paints, solvents, glues, fuel, and battery acid.

¹⁶ *Id.* at 222-260.

¹⁷ *Id.*

¹⁸ 33 U.S.C. § 1311(a).

¹⁹ 33 U.S.C. § 1362(12).

²⁰ EPA has determined that precipitation greater than 0.1 inches in a 24-hour period constitutes a measurable precipitation event for the purposes of evaluating stormwater runoff associated with industrial activity. *See, e.g.*, 40 C.F.R. § 122.26(c)(1)(E)(6) (using 0.1 inches as the distinguishing threshold of a storm event).

In carrying out these activities at the Facility, you store and handle materials in a manner that exposes them to precipitation and snowmelt. In particular, moving, stockpiling, processing, and crushing metal, or other waste materials often leads to the release of pollutants including: scrap metal; paint; sediment; crushed glass; copper; lead; zinc; nickel; iron; aluminum; arsenic; cadmium; cobalt; silver; mercury; and other metals, as well as non-metal pollutants of concern and numerous other waste materials.²¹

In addition, machinery on the site may release fuel, oil, lubricants, PCBs, PAHs, an array of metals, pH-affecting substances and chemical residue. These toxic pollutants are often generated in the form of small particulate matter, which settles on the ground and other surfaces that are exposed to stormwater and non-stormwater flows. Also, vehicles at the Facility may expose many other pollutants to the elements, including gasoline, diesel fuel, anti-freeze, and hydraulic fluids.

Because you fail to adequately fence, shelter and otherwise contain these materials to prevent their release to the environment, precipitation falls on and flows over exposed materials, fluids, and particulates. Stormwater picks up oil, grease, metals, paints, plastic, solvents, nutrients, pathogens, particulates, dust and other solids that can dissolve or suspend in stormwater, and other trash and pollutants associated with the Facility's operations. Polluted stormwater is then conveyed off-site and directly discharged into waters of the United States due to the slope of the land at the Facility. Further, vehicles at the Facility track dust, particulate matter, and other contaminants to areas on and off the premises from which these pollutants can enter stormwater and, ultimately, waters of the United States.

Additionally, contaminated stormwater is directed into two on-site catch basin drywells and is discharged into waters of the United States through a direct hydrological connection in the groundwater between the catch basin drywells and Bridgeport Harbor. The federal courts hold that "[t]he Clean Water Act extends federal jurisdiction over groundwater that is hydrologically connected to surface waters that are themselves waters of the United States."²² Their position is entirely in line with the U.S. Environmental Protection Agency, which interprets the CWA "to apply to discharges of pollutants from a point source via ground water that has a direct hydrologic connection to surface water" and, thus, "collected or channeled pollutants conveyed to surface water via groundwater can constitute a discharge subject to the Clean Water Act."²³

²¹ See EPA, "Industrial Stormwater Fact Sheet Series, Sector N: Scrap Recycling and Waste Recycling Facilities," available at <http://cfpub.epa.gov/npdes/stormwater/swsectors.cfm> (last visited May 29, 2013).

²² *Hernandez v. Esso Standard Oil Co.*, 599 F. Supp. 2d 175, 181 (D. Puerto Rico, 2009) (reviewing and collecting federal cases); see also *Dague v. City of Burlington*, 935 F.2d 1343, 1354-55 (2d Cir. 1991), rev'd in part on other grounds (award of attorney's fees), 505 U.S. 557; *New York v. United States*, 620 F. Supp. 374, 381 (E.D.N.Y. 1985) (a citizen suit may be brought where a discharge to groundwater threatens to contaminate navigable waters); *Mutual Life Ins. Co. of New York v. Mobil Corp.*, No. 96-CV-1781, 1998 U.S. Dist. LEXIS 4513, at *6-*7 (N.D.N.Y.) (Mar. 31, 1998) (upholding a complaint against groundwater discharge as a valid Clean Water Act claim and noting that "several district courts have held that the CWA does encompass ground waters that are hydrologically connected to regulated surface waters."); cf. *Waterkeeper Alliance, Inc. v. U.S. E.P.A.*, 399 F.3d 486, 514 fn.26 (2d Cir. 2005) (In a Clean Water Act rulemaking, EPA did not intend to suggest that permitting authorities lacked authority to regulate discharges to groundwater that is hydrologically connected to surface on a case-by-case basis, where necessary).

²³ National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitation Guidelines and Standards for Concentrated Animal Feeding Operations, 66 Fed. Reg. 2960, 3017 (Jan. 12, 2001).

The groundwater below the Facility is unquestionably connected to the adjacent Johnsons Creek. Therefore, point source discharges into the ground underneath the Facility are subject to CWA jurisdiction. By using a berm to block off the flow of polluted stormwater, you channel it instead to low points on the property, where it puddles and infiltrates into groundwater just feet from Johnsons Creek and then is conveyed through soil and groundwater into Johnsons Creek. Additionally, by creating the on-site catch basin drywells, you collect polluted stormwater and channel it to infiltrate into the groundwater just feet from Johnsons Creek, where polluted stormwater is then conveyed through the groundwater into Johnsons Creek via a direct hydrological connection.

You have a long history of violating the General Permit. Connecticut first required scrap metal yards to obtain General Permit coverage in 1992. You have been in business since October of 1981, but you have never applied for permit coverage. For more than twenty years, you have continued to discharge stormwater associated with industrial activity without permit coverage.

You do not have NPDES permit coverage for the point source discharges of pollutants described above. Polluted stormwater discharges flow from the Facility into Bridgeport Harbor and then to Long Island Sound, which are “waters of the United States,” as defined in 40 C.F.R. § 122.2, and therefore, “navigable waters,” as defined in 33 U.S.C. § 1362(7). Thus, you are discharging polluted industrial stormwater without the permit required under Sections 301 and 402 of the CWA.

B. You are Violating the Clean Water Act by Failing to Apply for NPDES Permit Coverage

You are engaged in the business of purchasing, collecting, storing, processing, reselling and shipping scrap metals, and other waste materials. Because of these activities, you are an industrial discharger categorized under primary Standard Industrial Classification (“SIC”) Code of 5093. Pursuant to Section 402(p) of the CWA and regulations promulgated by EPA pursuant to the CWA, you must apply for coverage under the General Permit or an individual NPDES permit for your discharge of polluted stormwater. In addition, you must apply for an individual NPDES permit if the Facility is discharging process wastewater, or has any other non-stormwater discharge containing pollutants that is not authorized by the General Permit. By failing to apply for, obtain coverage under, and comply with the requirements of the General Permit or an individual permit, you are violating CWA Sections 301(a) and 402(a) and (p) and 40 C.F.R. §§ 122.26(c)(1) and (e)(1).²⁴

To be eligible to discharge under the General Permit, you must submit a registration form to DEEP.²⁵ Notice of Intent forms are available online from DEEP. To register, you are required

²⁴ Sections 301(a) and 402(a) and (p) make it unlawful for you to discharge stormwater associated with industrial activity without obtaining and complying with the conditions of a NPDES permit. 40 C.F.R. Sections 122.26(c)(1) and (e)(1) require you to apply for a NPDES permit that covers its discharge of stormwater associated with industrial activity.

²⁵ See General Permit, Section 4. In notifying you that the Clean Water Act requires coverage under and compliance with a valid NPDES permit in order to lawfully discharge, and that submission of a registration form to DEEP is required in order to obtain coverage under the General Permit, Notifiers do not concede that all of the activities

to include a brief description of all stormwater discharges, including descriptions of: the conveyances, outfalls or channelized flows that run off the site; the property and amount of impervious surfaces in square feet or acres; and the name of the watershed and nearest waterbody to which the site discharges and its Water Quality Classification.²⁶

You have failed to prepare and file a registration form or an application for an individual permit.²⁷

C. You are Violating the Clean Water Act by Failing to Comply with the General Permit.

As a discharger of stormwater associated with industrial activity, you must comply at all times with the requirements of the General Permit (or an individual permit).²⁸ By discharging stormwater associated with industrial activity without complying with the General Permit, you are violating CWA Sections 301(a) and 402(a) and (p).²⁹ The main General Permit requirements that you have failed and continue to fail to meet are explained further below.

1. You have failed to develop and implement a Stormwater Pollution Prevention Plan.

Before submitting a registration form, you must prepare, make available, and implement a Stormwater Pollution Prevention Plan (“SWPPP”)³⁰ in accordance with schedules established in the General Permit.³¹ Among other things, the SWPPP must include: a facility description, a general location map identifying the location of the facility and all receiving waters to which stormwater discharges, information related to a company stormwater pollution prevention team, a summary of potential pollutant sources, a description of control measures, and schedules and procedures for implementation of control measures, monitoring and inspections, as well as certain additional requirements specific to a scrap metal recycling facility.³² You have failed to develop, make available, and implement a compliant SWPPP.³³

conducted at the Facility are necessarily eligible for coverage under that permit. For example, if the Facility is discharging process wastewater, such as wash water, or has any other polluted non-stormwater discharge that is not authorized by the General Permit, then an individual NPDES permit is required and the failure to obtain and comply with an individual NPDES permit for such discharges also violates CWA §§ 301(a) and 402(p). The conditions for eligibility to discharge under the General Permit are listed in the permit.

²⁶ See General Permit, Section 4(c)(2)(F).

²⁷ A thorough search of EPA’s Enforcement & Compliance History Online (“ECHO”) database and DEEP’s records reveals that no registration form has been submitted for the Facility.

²⁸ This section discusses the compliance requirements of the General Permit. If you elect to seek coverage under an individual NPDES permit instead, the conditions of that individual permit will be at least as strict as those of the General Permit, thus you will still be required to comply with all of the following.

²⁹ Sections 301(a) and 402(a) and (p) make it unlawful for you to discharge stormwater associated with industrial activity without first complying with all of the conditions established in a NPDES permit.

³⁰ The General Permit abbreviates the Stormwater Pollution Prevention Plan as “Plan”.

³¹ See General Permit, Section 5(c).

³² See General Permit, Section 5(c)(2), 5(f)(5)(C) (additional SWPPP requirements for scrap recycling facilities).

³³ A thorough search of DEEP’s database, *supra* note 21, reveals that as of the date of this notice, no SWPPP has been prepared or submitted for the Facility as part of the registration for permit coverage. On information and belief, no SWPPP exists.

2. You have failed to implement control measures and Best Management Practices.

You cannot legally discharge stormwater under the General Permit until you implement mandatory general and sector-specific control measures called Best Management Practices (“BMPs”) in order to minimize the discharge of pollutants from the Facility.³⁴ The selected measures must reduce the discharge of pollution from the Facility to the extent practicable through use of the best available technology for the industry.

The General Permit requires that the permittee must use BMPs that will

minimize the discharge of pollutants from the permitted facility. The term “minimize” means reduce and/or eliminate to the extent achievable using control measures that are technologically available and economically practicable and achievable in light of best industry practice.³⁵

These BMPs include: minimizing exposure of stormwater to certain materials, for example by means of a permanent roof or cover;³⁶ managing stormwater runoff, for example through implementing measures such as diverting uncontaminated run-on to avoid areas that may contribute to pollutants, or through collection and reuse or treatment measures;³⁷ preventative maintenance and testing;³⁸ spill prevention and response procedures;³⁹ and eliminating non-stormwater discharges.⁴⁰ For scrap recycling facilities, the General Permit also sets out sector-specific BMPs such as establishment of an inbound recyclable and waste material control program.⁴¹

You have not implemented required control measures or BMPs that are technologically achievable and economically practicable and achievable in light of best industry practice. You have failed to prevent groundwater contamination by pretreating stormwater before infiltrating it into the ground.

3. You have failed to conduct routine site inspections and comply with monitoring, recordkeeping, and reporting requirements.

You must conduct routine comprehensive inspections of areas where industrial materials or activities are exposed to precipitation and must ensure that all stormwater control measures comply with the SWPPP.⁴² There are two different kinds of inspections required by the General

³⁴ See General Permit Sections 5(b) (general BMPs) and 5(f) (includes sector-specific BMPs).

³⁵ General Permit, Section 5(b).

³⁶ See General Permit, Section 5(b)(5); *see also* General Permit, Section 5(c)(2)(D)(ii) (requiring an inventory of exposed materials).

³⁷ See General Permit, Section 5(b)(7).

³⁸ See General Permit, Section 5(b)(8).

³⁹ See General Permit, Section 5(b)(9).

⁴⁰ See General Permit, Section 5(b)(11).

⁴¹ See General Permit, Section 5(f)(5)(B).

⁴² See General Permit, Section 5(d).

Permit. At least twice a year, qualified personnel must visually inspect material handling areas and other potential sources of pollution, and prepare a report summarizing the details and results of the inspection.⁴³ In addition, you must also ensure that qualified personnel conduct monthly visual inspections of equipment and specific sensitive areas of the site.⁴⁴ The schedule of these inspections as well as the records and reports resulting from these inspections must be included in your SWPPP.⁴⁵

The General Permit also requires that you collect and analyze stormwater samples, document monitoring activities, and submit reports to DEEP.⁴⁶ The General Permit requires that all covered facilities conduct multiple types of analytical monitoring, and DEEP may require additional individualized monitoring as well.⁴⁷ Further, because the Facility is a scrap recycling facility, more frequent quarterly and semi-annual monitoring is required as well as additional sector-specific benchmark monitoring.⁴⁸ In addition, because Bridgeport Harbor and Long Island Sound are “impaired waters” under 33 U.S.C. § 1313(d), you must monitor for all pollutants for which those waterbodies are impaired.⁴⁹

Notifiers are not necessarily aware of all industrial activities taking place at the Facility. To the extent that industrial activities other than the above are carried out at the Facility, other sampling may be required as well.⁵⁰ This notice provides you with sufficient information to identify these standards and limitations.

Stormwater samples must be collected from any discharge resulting from a storm event that occurs at least 72 hours after any previous storm event generating a stormwater discharge, and must be taken during the same storm event, if feasible.⁵¹ These samples must be tested for pollution according to the methods prescribed in 40 C.F.R. part 136, unless otherwise specified in the General Permit.⁵²

For each measurement or sample taken, you must maintain records that include: the place, date, and time of sampling and the time the discharge started; the person(s) collecting the samples; the dates and times the analyses were initiated; the person(s) or laboratory that performed the analyses; the analytical techniques or methods used; and the results of all analyses.⁵³ All records and information resulting from the monitoring activities required by the General Permit, including all records of analyses performed and calibration and maintenance of instrumentation, must be retained for a minimum of five years following the expiration of the General Permit.⁵⁴

⁴³ See General Permit, Section 5(d)(1).

⁴⁴ See General Permit, Section 5(d)(2).

⁴⁵ See General Permit, Section 5(d).

⁴⁶ See General Permit, Sections 5(e) and 5(h).

⁴⁷ See General Permit, Section 5(c).

⁴⁸ See General Permit, Section 5(f)(5).

⁴⁹ See General Permit, Section 5(e)(1)(D).

⁵⁰ See General Permit, Section 5(f).

⁵¹ See General Permit, Section 5(e)(2)(A).

⁵² See General Permit, Section 5(e)(2)(D)(i), *see also* 40 C.F.R. § 136. This does not include acute toxicity biomonitoring tests, as stated in General Permit, Section 5(e)(2)(D)(ii).

⁵³ See General Permit, Section 5(h)(1)(A).

⁵⁴ See General Permit, Section 5(h)(2).

You must maintain all required monitoring data, and submit copies of certain data to DEEP in the form of reports specified in the General Permit.⁵⁵ Required monitoring data includes: stormwater monitoring reports (SMR) identifying all discharges;⁵⁶ inspection reports, summarizing the scope and description of the inspections, as well as major observations, actions taken and updates made to the SWPPP;⁵⁷ semiannual benchmark monitoring reports;⁵⁸ an Exceedance Report that must be submitted to DEEP if any of the follow-up monitoring shows any exceedance of a numeric effluent limit;⁵⁹ and any other required reports under the General Permit. Additionally, you have a duty to correct and report any violations immediately upon learning of such a violation.⁶⁰

You have failed to conduct the required routine inspections, monitoring and testing under the General Permit, and have failed to retain records and submit the required monitoring data and reports to DEEP.

5. You have failed to meet certain additional criteria that apply because you discharge into an impaired waterbody.

Bridgeport Harbor and Long Island Sound are impaired waters, as defined by the General Permit.⁶¹ The causes of impairment include low dissolved oxygen. Scrap recycling facilities frequently discharge pollutants that create oxygen demand as they biodegrade, including various hydrocarbons.⁶² You have not prevented all exposure of oxygen-demanding pollutants to stormwater. You have not documented (and cannot document) that oxygen-demanding pollutants are not present onsite. Therefore, Notifiers allege that you discharge oxygen-demanding pollutants.

Industrial activities that discharge to impaired waters, such as those conducted by you, are required to meet certain criteria identified in the General Permit.⁶³ Under the General Permit, you cannot discharge any polluted stormwater that will “cause or contribute to an exceedance of the applicable Water Quality Standards in the receiving water.”⁶⁴ You have discharged into an impaired water without an established Total Maximum Daily Load (“TMDL”) and have failed to comply with the requirements of Section 5(c)(5) and 5(e)(1)(D) of the General Permit.⁶⁵ Under Section 5(e)(1)(D), you must monitor discharges from the Facility for the presence of pollutants

⁵⁵ See General Permit, Section 5(h)(3).

⁵⁶ See General Permit, Section 5(c)(2)(A).

⁵⁷ See General Permit, Section 5(d)(1)(B).

⁵⁸ See General Permit, Section 5(e)(1)(B)(v).

⁵⁹ See General Permit, Section 5(e)(1)(F)(ii).

⁶⁰ See General Permit, Section 6(b).

⁶¹ See General Permit, Section 2, “‘Impaired waters’ means those surface waters of the state designated by the commissioner as impaired pursuant to Section 303(d) of the Clean Water Act and as identified in the most recent State of Connecticut Integrated Water Quality Report.”

⁶² See EPA, “Industrial Stormwater Fact Sheet Series, Sector N: Scrap Recycling and Waste Recycling Facilities,” available at <http://cfpub.epa.gov/npdes/stormwater/swsectors.cfm> (last visited May 29, 2013) (explaining that recycling facilities frequently discharge oil, grease, fuel, chemical residue, petroleum products, solvents, and other oxygen-demanding substances).

⁶³ See General Permit, Section 5(g).

⁶⁴ General Permit, Section 5(a)(5).

⁶⁵ See General Permit, Section 5(g)(1).

that could contribute to the impairments in Bridgeport Harbor and Long Island Sound. Also, under Section 5(c)(5), you must not only create a SWPPP for the Facility, but you must update that SWPPP if and when notified that DEEP will apply specific requirements to their discharge because of the existing impairments of Bridgeport Harbor and Long Island Sound.

Finally, federal law requires that your discharges of oxygen demanding substances must be subject to specific, enforceable water quality based effluent limitations that will prevent your discharge from causing or contributing to the dissolved oxygen impairment in Bridgeport Harbor.⁶⁶ The NPDES permitting program prohibits the issuance of a permit to a new discharger if that additional discharge will contribute to the receiving waterbody's violation of water quality standards.⁶⁷ There is no assimilative capacity for oxygen demanding substances in Bridgeport Harbor. Thus, dissolved oxygen levels in your discharge cannot exceed the dissolved oxygen water quality criteria for Bridgeport Harbor.⁶⁸

You have failed to comply with the requirements applicable to a discharger to an impaired waterbody without a TMDL under Sections 5(c)(5), 5(e)(1)(D), and 5(g) of the General Permit, and the requirement of state and federal law that you not discharge pollution that causes or contributes to a violation of water quality standards.⁶⁹

8. You have failed to comply with additional requirements located in Section 5 of the Permit.

As noted above, the General Permit contains various requirements specific to a scrap recycling facility. These requirements, many of which are listed above, are collected in Section 5(f)(5) of the General Permit. You have failed to comply with the additional requirements of Section 5(f)(5) of the General Permit.

In addition, you have failed to assure that any activities authorized under the General Permit are conducted in accordance with the following conditions under General Permit Section 5(a):

- General Permit Section 5(a)(3): There shall be no distinctly visible floating scum, oil or other matter contained in the stormwater discharge. Excluded from this are naturally occurring substances such as leaves and twigs provided no person has placed such substances in or near the discharge.
- General Permit Section 5(a)(4): The stormwater discharge shall not result in pollution due to acute or chronic toxicity to aquatic and marine life, impair the biological integrity of aquatic or marine ecosystems, or result in an unacceptable risk to human health.

⁶⁶ See 40 C.F.R. § 122.44(d)(1).

⁶⁷ See *Friends of Pinto Creek v. U.S. EPA*, 504 F.3d 1007, 1012 (9th Cir. 2009) (stating that "no permit may be issued to a new discharger if the discharge will contribute to the violation of water quality standards," which "corresponds to the stated objectives of the Clean Water Act 'to restore and maintain the chemical, physical, and biological integrity of the nation's waters'"); *Friends of the Wild Swan v. U.S. EPA*, 74 Fed. Appx. 718, 724 (9th Cir. 2003) (holding the EPA regulatory scheme "preclude[s] issuance of new permits for new sources that will cause or contribute to a violation of water quality standards")

⁶⁸ See CT WQS at 16. The dissolved oxygen criteria are (a) 3.0 mg/L acute, and (b) chronic levels above 4.8 mg/L, with cumulative periods between 3.0-4.8 mg/L not to exceed those detailed in Appendix C of the CT WQS.

⁶⁹ See General Permit, Section 5(g)(1).

- General Permit Section 5(a)(5): The stormwater discharge shall not cause or contribute to an exceedance of the applicable Water Quality Standards in the receiving water.
- General Permit Section 5(a)(6): Any new stormwater discharge to high quality waters (as defined in the Water Quality Standards) shall be discharged in accordance with the Connecticut Anti-Degradation Implementation Policy in the Water Quality Standards manual.

You have failed to comply with these requirements.

You also have failed to comply with the additional requirements of Section 5(b) of the General Permit, including the requirement in Section 5(b)(9) that spill prevention and response procedures be identified and implemented and 5(b)(11) that non-stormwater discharges be eliminated.

Additionally, in part 5(i) of the General Permit, Connecticut DEEP incorporated by reference certain state regulations that set forth the duties of lawful NPDES permit holders. You are violating these obligations. These duties include:

- to comply with all terms and conditions of a NPDES permit;
- to properly operate and maintain facilities and systems for wastewater collection, storage, treatment and control;
- to use approved methods for disposal of any screenings, sludges, chemicals and oils and any solid or liquid wastes resulting from wastewater treatment;
- to maintain practices, procedures and facilities designed to prevent, minimize and control spills, leaks or such other unplanned releases of all toxic or hazardous substances and any other substances as the commissioner deems necessary to prevent pollution of the waters of the state; and
- to take all reasonable steps to minimize or prevent any discharge in violation of the permit or any discharge which has a reasonable likelihood of adversely affecting human health or the environment.⁷⁰

In sum, your discharge of stormwater associated with industrial activities without a permit and your failure to apply for, obtain coverage under, and comply with the above-listed conditions of the General Permit (or an individual NPDES permit) constitute violations of the General Permit and of Sections 301(a) and 402(p) of the Clean Water Act, 33 U.S.C. §§ 1311(a), 1342(p).

III.

PERSONS RESPONSIBLE FOR ALLEGED VIOLATIONS

You are the person(s), as defined by Section 502(5) of the CWA, responsible for the violations alleged in this Notice. On information and belief, PC Metals, Inc. has operated the Facility since October 2, 1981 and G.C. Metals Recycling, Inc. has operated the Facility since October 29,

⁷⁰ See Regulations of Connecticut State Agencies §§ 22a-430-3 (e)-(h) and (p), incorporated into the General Permit in Section 5(i)(1).

1979. You advertise, by means of signage including a large sign on the roof of a structure that says "P.C. Metals" at the Facility, as the operator of the facility. You have operational control over the day-to-day industrial activities at this Facility. Therefore, you are responsible for managing stormwater at the Facility in compliance with the CWA. Notifiers hereby put you on notice that if Notifiers subsequently identify additional persons as also being responsible for the violations set forth above, Notifiers intend to include those persons in this action.

V.

LOCATION OF THE ALLEGED VIOLATION

The violations alleged in this Notice have occurred and continue to occur at the Facility located at 270 Central Ave., Bridgeport, CT, 06607, between the west bank of Johnson's Creek and Central Avenue. The failure to develop and implement pollution prevention plans and take the other required measures are violations occurring at the Facility in general and in the inadequate documents themselves.⁷¹

VI.

DATES OF VIOLATION

Each day on which you have failed to apply for permit coverage since you first commenced operations at the Facility and discharged stormwater is a separate and distinct violation of Sections 301(a) and 402(p)(3)(A) and (p)(4)(A) of the Clean Water Act and EPA's regulations implementing the CWA.

Additionally, you have discharged without a permit in violation of Section 301(a) of the CWA on every day from the commencement of your operation at the Facility on which there has been a measurable precipitation event or discharge of previously accumulated precipitation (i.e. snowmelt) over 0.1 inches. These days of violation have continued consecutively since Oct. 1, 1992, when Connecticut's first general permit for the discharge of stormwater associated with industrial activity came into effect.

Finally, if you seek permit coverage after receiving this letter but fail to fully comply with the requirements of the General Permit (or an individual permit), each day upon which you claim coverage under a NPDES permit but fail to comply with that permit will constitute a separate day of violation with respect to each unmet condition of that permit.

⁷¹ The federal courts have held that a reasonably specific indication of the area where violations occurred, such as the name of the facility, is sufficient and that more precise locations need not be included in the notice. *See, e.g., Natural Resources Defense Council v. Southwest Marine, Inc.*, 945 F. Supp. 1330, 1333 (S.D. Cal. 1996), *aff'd* 236 F.3d 985, 996 (9th Cir. 2000); *City of New York v. Anglebrook Ltd. Partnership*, 891 F. Supp. 900, 908 (S.D.N.Y. 1995); *United Anglers v. Kaiser Sand & Gravel Co.*, No. C 95-2066 CW, 1995 U.S. Dist. LEXIS 22449 at *4 (N.D. Cal. Sept. 27, 1995).

You are liable for the above-described violations occurring prior to the date of this letter, and for every day after the date of this letter that these violations continue. In addition to the violations set forth above, this Notice covers all violations of the CWA evidenced by information that becomes available to Notifiers after the date of this Notice of Intent to File Suit.⁷²

These violations are ongoing, and barring full compliance with the permitting requirements of the Clean Water Act, these violations will continue.

VII.

RELIEF REQUESTED

You are liable for the above-described violations occurring prior to the date of this letter, and for every day after the date of this letter that these violations continue. In addition to the violations set forth above, this Notice covers all violations of the CWA by you evidenced by information that becomes available to Notifiers after the date of this Notice of Intent to File Suit.

Notifiers will ask the court to order you to comply with the Clean Water Act, to pay penalties, and to pay Notifier's costs and legal fees.

Notifiers will seek declaratory relief and injunctive relief to prevent further violations of the Clean Water Act pursuant to CWA Sections 505(a) and (d), and such other relief as permitted by law. Notifiers will seek an order from the Court requiring you to obtain NPDES permit coverage and to correct all other identified violations through direct implementation of control measures and demonstration of full regulatory compliance.

In addition, pursuant to Section 309(d) of the CWA,⁷³ each separate violation of the CWA subjects you to a penalty not to exceed \$32,500 per day for each violation which occurred between March 15, 2004 and January 12, 2009, and up to \$37,500 per day for each violation that occurred after January 12, 2009.⁷⁴ Notifiers will seek the full penalties allowed by law.

Lastly, pursuant to Section 505(d) of the CWA, Notifiers will seek recovery of their litigation fees and costs (including reasonable attorney and expert witness fees) associated with this matter.

VIII.

PERSONS GIVING NOTICE

The full name, address, and telephone number of the persons giving notice are as follows:

⁷² See, e.g. *Public Interest Research Grp. v. Hercules, Inc.*, 50 F.3d 1239, 1248-49 (3d Cir.1995) (a notice that adequately identifies specific violations to a potential defendant also covers repeated and related violations that the plaintiff learns of later. "For example, if a permit holder has discharged pollutant 'x' in excess of the permitted effluent limit five times in a month but the citizen has learned only of four violations, the citizen will give notice of the four violations of which the citizen then has knowledge but should be able to include the fifth violation in the suit when it is discovered.").

⁷³ 33 U.S.C. § 1319(d); see also 40 C.F.R. § 19.4 (Adjustment of Civil Monetary Penalties for Inflation).

⁷⁴ 40 C.F.R. § 19.2.

Connecticut Fund for the Environment, Inc.
142 Temple Street, Suite 305
New Haven, CT 06510
(203) 787-0646
Attn: Lauren Savidge (ext. 122)

Conservation Law Foundation
15 East State St., Suite 4
Montpelier, VT 05602-3010
(802) 223-5992
Attn: Zachary K. Griefen (ext. 4011)

Soundkeeper, Inc.
Physical address: 7 Edgewater Place
Mailing address: P.O. Box 4058
Norwalk, CT 06855
(203) 854-5330
Attn: Terry Backer

IX.

IDENTIFICATION OF COUNSEL

Notifiers are represented by legal counsel in this matter. The name, address, and telephone number of Notifiers' attorneys are:

Roger Reynolds, Esq.
Lauren Savidge, Esq.
Connecticut Fund for the Environment, Inc.
142 Temple Street, Suite 305
New Haven, CT 06510
(203) 787-0646

Christopher M. Kilian, Esq.
Zachary K. Griefen, Esq.
Conservation Law Foundation
15 East State St., Suite 4
Montpelier, VT 05602-3010
(802) 223-5992

Reed Super, Esq.
Alexandra Hankovszky, Esq.
Edan Rotenberg, Esq.
Super Law Group, LLC
131 Varick Street, Suite 1001

New York, New York 10013
(212) 242-2355

X.

CONCLUSION

The foregoing provides more than sufficient information to permit you to identify the specific standard, limitation, or order alleged to have been violated, the activity alleged to constitute a violation, the person or persons responsible for the alleged violation, the location of the alleged violation, the date or dates of such violation, and the full name, address, and telephone number of the person giving notice.⁷⁵

You are now on notice that you have been operating illegally and that you must seek permit coverage immediately. The law is clear. Although Notifiers are amenable to a speedy, negotiated resolution of your non-compliance, we intend to enforce the Clean Water Act and ensure that your discharge of pollution to Bridgeport Harbor is brought under control.

If you have developed a SWPPP, Notifiers request that you send a copy to the undersigned attorney.⁷⁶ Otherwise, Notifiers encourage you to begin developing a SWPPP immediately after receiving this letter and ask that you please inform the undersigned attorney of your efforts so that Notifiers can work with you to avoid disputes over the contents of the SWPPP.⁷⁷

During the sixty-day notice period, Notifiers are willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of protracted litigation. If you wish to pursue such discussions, please have your attorney contact the undersigned attorney immediately so that negotiations may be completed before the end of the sixty-day notice period. We do not intend to delay the filing of a complaint in federal court, regardless of whether discussions are continuing at the conclusion of the sixty days.

⁷⁵ 40 C.F.R. § 135.3(a).

⁷⁶ Note that under Part III.D.2 of the General Permit, the owner or operator of a facility "must make a copy of the SWPPP available to the public within 14 days of receipt of a written request."

⁷⁷ Notifiers will not send a new notice letter in response to any effort you make to come into compliance with the Clean Water Act after receiving this letter, for example, by developing a SWPPP. The federal courts have held that citizens sending a notice letter are not required to identify inadequacies in compliance documents that do not yet exist and are "not required to send a second notice letter in order to pursue specific claims regarding the inadequacies of [a defendant's] post-notice compliance efforts." *WaterKeepers N. Cal. v. AG Indus. Mfg.*, 375 F.3d 913, 920 (9th Cir. 2004). *See also Natural Resources Defense Council v. Southwest Marine, Inc.*, 236 F.3d 985, 997 (9th Cir. 2000) ("subject matter jurisdiction is established by providing a notice that is adequate on the date it is given to the defendant. The defendant's later changes . . . do not retroactively divest a district court of jurisdiction under 33 U.S.C. § 1365(b)."); *City of New York v. Anglebrook L.P.*, 891 F. Supp. 900, 908 (S.D.N.Y. 1995) (plaintiff's notice letter based on inadequacies of defendant's original SWPPP held sufficient to establish court's jurisdiction, even though defendant later prepared a revised SWPPP).

Sincerely,

Lauren Savidge, Esq.
Connecticut Fund for the Environment
142 Temple Street, Suite 305
New Haven, CT 06510
(203) 787-0646 x122
lsavidge@ctenvironment.org

cc:

Bob Perciasepe, Acting Administrator
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

H. Curtis Spalding, EPA Region 1 Administrator
Environmental Protection Agency
5 Post Office Square - Suite 100
Boston, MA 02109

Daniel C. Esty, Commissioner
Connecticut Department of Energy & Environmental Protection
79 Elm Street
Hartford, CT 06106-5127

Peter J. Carbone
Registered Agent, PC Metals, Inc.
270 Central Ave.
Bridgeport, CT 06607

Gloriana Carbone Tardie
Registered Agent, G.C. Metals Recycling, Inc. (d/b/a G C Precious Metals, Inc.)
270 Central Ave.
Bridgeport, CT 06607

